IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

MFA.No. 511 of 2002(A)

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OPMV.626/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE

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APPELLANT: PETITIONER

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P.P.NARAYANI,AGED 55 YEARS,W/O.BALAN,
KATTODI NILAM HOUSE,P.O.KALLAI,CALICUT-3.

BY ADV. SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENTS: RESPONDENTS

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1. K.ASSAN S/O.BEERAN,K.B.SANDS,AREEKAD,
NALLALAM,CALICUT.

2. K.SUKUMARAN S/O.NARAYANAN,PULIKKAL
PARAMBU HOUSE,PANNIANKARA,CALICUT.

3. THE BRANCH MANAGER,UNITED INDIA
INSURANCE CO.LTD.,KALLAI ROAD,CALICUT.

4. K.SREEDHARAN S/O.VELAYUDHAN,KAMMANA
HOUSE,PERUMANNA,CALICUT.

5. K.MURALEEDHARAN S/O.NARAYANAN NAIR,
KUNNATH HOUSE,KUTTIAKKATTOR,CALICUT.

6. THE BRANCH MANAGER,UNITED INDIA
INSURANCE CO. LTD.,CALICUT.

BY ADV. SMT.NARAYANIKUTTY CHETTOOR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.PADMANABHAN NAIR, J.**

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M.F.A.No.511 of 2002

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Dated this the 9th August, 2007.

**J U D G M E N T**

Petitioner in O.P.(M.V.) No.626/1993, on the file of the Motor Accidents Claims Tribunal, Kozhikode, is the appellant. The appellant sustained injuries in a motor vehicle accident on 5.9.1992. She filed the original petition claiming an amount of Rupees Two Lakhs as compensation alleging that the accident occurred due to the negligence of the respondents 2 and 5, the drivers of two vehicles. The owners and drivers of both the vehicles remained ex parte. Respondents 3 and 6 who were the Insurers of the vehicles filed written statements disputing the negligence alleged. The quantum of compensation claimed was also disputed. The Tribunal found that the accident occurred due to the negligence of both the drivers. It also found that the appellant is entitled to get a compensation of Rs.35,400/=. Respondents 3 and 6, the Insurers of both vehicles, was also directed to deposit that amount. Challenging the quantum of compensation, petitioner herself had filed this appeal.

2. The finding that accident occurred due to the negligence of respondents 2 and 5, and the appellant was entitled to get the compensation have become final and conclusive. The finding

that the Insurers of both vehicles were liable to indemnify the Insured has also become final and conclusive. The only question now arising for consideration is whether the appellant is entitled to get any additional compensation.

3. Appellant sustained fracture of both bones of left leg lower one-third, and an injury to her cornea. She sustained other lacerated injuries also on various parts of her body. Appellant was treated as an inpatient for more than 26 days. The Doctor who treated the appellant issued a disability certificate showing that the appellant was having 25% permanent disability. The Tribunal did not award any amount on that count. The Tribunal awarded compensation under various other counts, including an amount of Rs.20,000/= for pain and sufferings.

4. The Tribunal itself had found that the appellant had sustained permanent disability and awarded an amount of Rs.12,000/= under Section 140 of the Motor Vehicles Act. The mere fact that the Doctor who issued Ext.A5 disability certificate was not examined, is not a ground to reject the entire claim. I am of the view that the Tribunal ought to have awarded some reasonable amount on

that count also. It is to be noted that she was working as a cook in a toddy shop and was earning an amount of Rs.1250/= per month. It is true that the Tribunal awarded an amount of Rs.20,000/= for pain and sufferings. If disability is taken as 25%. the appellant is entitled to get more than Rs.30,000/= on that count. Hence, I am of the view that at least an amount of Rs.15,000/= for disability and discomfort ought to have been awarded. However, I do not find any ground to interfere with the quantum of compensation awarded under other heads.

In the result, the appeal is allowed in part. An award is passed allowing the appellant to recover an amount of Rs.15000/= as additional compensation from respondents 3 and 5, Insurance Companies, with 6% interest from the date of petition, till the date of realisation. The respondents 3 and 5 are directed to deposit the above amount also before the Tribunal within two months from today. On deposit, the appellant can withdraw the amount.

**K.PADMANABHAN NAIR,**
**JUDGE**

**nj.**

**K.PADMANABHAN NAIR, J.**

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M.F.A.No. 511 of 2002

**J U D G M E N T**

Dated:9th August, 2007.

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